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In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. A-533

MARGUERITE L. ORAM,

Petitioner,

v.

GENERAL AMERICAN OIL CO. OF TEXAS, ET AL,

Respondents.

REPLY TO PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Texas

Marvin R. Smith, Alma L. Smith, and Lawyers Surety Corporation, three of the Respondents herein, pray that certiorari be denied herein in connection with the judgment of the Court of Civil Appeals, Eleventh Supreme Judicial District of Texas, entered December 7, 1973, Writ of Error refused by the Supreme Court of Texas, July 17, 1974, affirming the summary judgment entered by the District Court of Dallas County, Texas, Fourteenth Judicial District, entered April 5, 1973.

I.

OPINIONS BELOW

A. Court of Civil Appeals, Eleventh Judicial Court of Texas, 503 S.W. 2d 607, December 7, 1974.

B. Supreme Court of Texas, 513 S.W. 2d 533, July 17, 1974.

II.

OBJECTION TO JURISDICTION

Petitioner aserts jurisdiction of the Supreme Court of the United States on three grounds, to-wit: (1) Title 28, United States Code Annotated, Rule 19, of the Revised Rules of the Supreme Court; (2) Amendment V to the Constitution of the United States; and (3) Amendment XIV to the Constitution of the United States.

Respondents respectfully submit that this court does not have jurisdiction of this case under either of the grounds alleged by Petitioner.

(1) Petitioner relies upon Title 28, United States Code Annotated, Rule 19, of the Revised Rules of the Supreme Court, insofar as said Rule provides that where a court has so far departed from the accepted and usual proceedings as to call for an exercise of this Court's power of supervision. This provision, Rule 19, does not apply to jurisdiction of writ of certiorari to a State court. Subparagraph (b) of Paragraph 1 of Rule 19, 28 U.S.C.A., Supreme Court Rules, by its very language applies only to decisions of courts of appeals of the United States. Since this subparagraph does not apply to application for writ of certiorari to a State court, then jurisdiction would not lie under this provision of Rule 19.

(2) Petitioner asserts jurisdiction of the Supreme Court under the provisions of U.S.C.A., Constitution, Amendment V, as guaranteeing due process of law and equal protection of the law.

Amendment V to the United States Constitution is a limitation upon the Federal Government and has no reference to State actions. *Maxwell v. Hudspeth*, 175 F. 2d 318; *Nottingham v. Mayo*, 173 F. 2d 574, cert. den., 69 Sup. Ct. 1488, 337 U.S. 933, 93 L. Ed. 1739.

Since the Fifth Amendment to the United States Constitution applies as a limitation on the Federal Government only, this Amendment would not vest jurisdiction in this Court to review a decision of the Supreme Court of the State of Texas.

(3) Petitioner also relies upon Amendment XIV to the Constitution of the United States, U.S.C.A., Constitution, Amendment XIV. Amendment XIV provides in part as follows, to wit:

> "; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Apparently Petitioner is contending that since the case in question was disposed of by way of summary judgment that the Petitioner's rights under the Fourteenth Amendment were violated. Petitioner was not deprived of her rights without due process of law or denied equal protection of the law by the summary judgment procedure in this case. Summary judgments are authorized by Rule 56, 28 U.S.C.A., Federal Rules of Civil Procedure, and by Rule 166-A, Vernon's Texas Rules of Civil Procedure. The courts have recognized that due process does not require an evidentiary proceeding. *Morton Salt Co. v. Suppinger Co.*, 314 U.S. 488, 62 S. Ct. 402, 86 L. Ed. 363; *Port of Palm Beach Dist. v. Goethals*, 104 F. 2d 706; *Fidelity and Deposit Co. of Maryland v. United States*, 187 U.S. 315, 23 S. Ct. 120, 47 L. Ed 194.

Since summary judgment procedure is authorized by the Rules of both the Federal Courts and the Courts of the State of Texas, it cannot be seriously contended that Plaintiff's rights under the Fourteenth Amendment to the

United States Constitution were violated by the use of this procedure.

We respectfully submit that Petitioner has failed to allege in her Petition for Writ of Certiorari grounds which would give this court jurisdiction to entertain this petition.

III.

QUESTION PRESENTED

Although Petitioner presents four numbered questions in her Petition, we believe that the questions presented are as follows:

(1) Was the denial by the Supreme Court of Texas of Petitioner's prayer for oral argument on her Motion for Rehearing a denial of due process of law?

(2) Was Petitioner denied due process of law or equal protection of the law by the granting of a summary judgment in favor of Defendants (Respondents)?

IV.

STATEMENT OF THE CASE

The opinion of the Court of Civil Appeals, Appendix I to Petition for Writ of Certiorari, correctly states the nature and result of this case. The opinion of the Supreme Court of Texas, Appendix IV to Petition for Writ of Certiorari, states the reason for the decision of the Supreme Court of Texas.

This was a suit to set aside a lease executed by Respondent, Alma Smith, as Guardian for Petitioner, after she was authorized to do so by the Probate Court of Dallas County. Respondent Marvin R. Smith was sued because he is the

husband of Alma Smith. Respondent Lawyers Surety Corporation was the Surety on Alma Smith's Guardian's Bond.

The lease in question was approved by the Probate Court and was approved by the Probate Court and authorized to be signed by Mrs. Smith as Guardian. After Petitioner's sanity had been restored by judicial decree, both Mrs. Smith, the Guardian, and her Surety, Lawyers Surety Corporation, filed a final report with the Probate Court, said final report was approved and both were discharged by the Probate Court. No effort was made by Petitioner to set aside the Order discharging the Guardian and her Surety or approving the final report. The final report made reference to the lease in question and accounted for the rental received by the Guardian.

The record reflects that after Petitioner was declared to be competent, she accepted the rents under the Lease Agreement from December, 1953, until April, 1973, when the Judgment in question in favor of Respondents was entered. Also, the record shows that Petitioner gave directions to Respondent, General American Oil Company of Texas, on several occasions as to the method in which the rental payments were to be handled.

The Supreme Court of Texas held that the acts of Petitioner in accepting the rental payments had the effect of recognizing the lease as subsisting and binding and had the effect of waiving or abandoning any right of rescission or of attack upon the validity of the lease.

Summary judgment in favor of Respondents, Defendants below, was entered by the Trial Court, affirmed by the Texas Court of Civil Appeals, with writ of error refused, no reversible error, by the Supreme Court of Texas.

V.

ARGUMENT

(1) Petitioner contends that the denial by the Supreme Court of Texas of Petitioner's prayer for oral argument on her motion for rehearing was a denial of due process of law. No authorities are cited by Petitioner in support of this question.

Vernon's Texas Rules of Civil Procedure provides for the procedure on motion for rehearing in the Supreme Court of Texas. Rule 515, Vernon's Texas Rules of Civil Procedure, provides for the filing of a motion for rehearing with the Clerk of the Supreme Court within fifteen (15) days after the date of rendition of the judgment or decision of the court or the order refusing or dismissing the application for writ of error. Rule 517, Vernon's Texas Rules of Civil Procedure, provides as follows with regard to a hearing on the motion for rehearing, to wit:

> "The opposing party shall have five (5) days after the notice, as provided for in Rule 516, in which to file an answer to the motion. Upon the filing of an answer or the expiration of the five-day period, the motion shall be deemed submitted to the court and ready for disposition. However, if the court deems it advisable, it may limit the time in which a motion for rehearing or an answer thereto may be filed, and may act upon any motion at any time after it is filed."

The rules with regard to motion for rehearing in the Supreme Court of Texas do not provide for oral argument.

We respectfully submit that there is no basis for Petitioner contending that the failure to grant oral argument to her by the Supreme Court of Texas constitute a violation of the due process provisions of the Fourteenth Amendment to the United States Constitution.

(2) Rule 166-A, Vernon's Texas Rules of Civil Procedure, specifically authorizes the dispoeition of a case on motion for summary judgment. Based on the record in this case, the Trial Court and the Texas Appellate Courts have held that the summary judgment for Defendants was properly granted.

Petitioner contends that the case should not have been disposed of on summary judgment, but that she should have an opportunity to be heard in another proceeding. She contends that this refusal to permit her to be heard in another proceeding amounted to a denial of due process and equal protection of the law.

Although the Trial Court did not state the reasons for its granting of a summary judgment in favor of the Defendants, the Supreme Court of Texas in its decision specifically held that the Petitioner had ratified and affirmed the acts of the Guardian and the acts of the Probate Court which were under attack in this suit. This determination is fully supported by the record and the opinion of the Supreme Court of Texas.

The mere fact that Petitioner had alleged in the Trial Court that there was fraud involved in the transaction does not necessarily defeat a motion for summary judgment, nor does the fact that Petitioner is a widow, nor does the fact that she at one time had been a person of unsound mind, deprive a court of the power to dispose of the case on the basis of summary judgment procedure.

The courts have recognized that the granting of summary judgment in favor of Defendants may be proper in cases where fraud is alleged in real estate transactions and that the granting of such summary judgment does not deprive a person of property without due process of law or equal protection of the law. *Knoshaug v. Pollman*, 245 F. 2d 271,

and *Iberian Oil Corp. v. Texas Crude Oil Company*, (CA Fifth) 328 F. 2d 832.

Unless this Court can say that the rules providing for summary judgment are unconstitutional where the suit involves a widow woman or a person who had at one time been adjudged to be of unsound mind, then this Petition for Writ of Certiorari should be denied.

VI.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be dismissed for lack of jurisdiction of this Court to entertain the same, or said Petition for Writ of Certiorari should be denied.

Respectfully submitted,

SANER, JACK, SALLINGER & NICHOLS,

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CERTIFICATE OF SERVICE

I, the undersigned, Attorney for Respondents, do hereby certify that a true and correct copy of the foregoing Answer to Petition for Writ of Certiorari has been mailed by certified mail to the attorneys of record representing the Petitioner and other Respondents herein, as shown hereunder, dated this the 16 day of January, 1975.

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